

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Thurgood Marshall
United States Courthouse, 40 Foley Square, in the City of
New York, on the 1st day of May, two thousand eighteen.

PRESENT:

BARRINGTON D. PARKER,
RAYMOND J. LOHIER, JR.,
CHRISTOPHER F. DRONEY,
Circuit Judges.

QIJUN OU,
Petitioner,

v.

JEFFERSON B. SESSIONS III,
UNITED STATES ATTORNEY GENERAL,
Respondent.

16-2884
NAC

FOR PETITIONER: Gerald Karikari, New York, NY.

FOR RESPONDENT: Chad A. Readler, Acting Assistant
Attorney General; Carl McIntyre,
Assistant Director; Brooke M.
Maurer, Trial Attorney, Office of
Immigration Litigation, United
States Department of Justice,
Washington, DC.

1 UPON DUE CONSIDERATION of this petition for review of a
2 Board of Immigration Appeals ("BIA") decision, it is hereby
3 ORDERED, ADJUDGED, AND DECREED that the petition for review
4 is DENIED.

5 Petitioner Qijun Ou, a native and citizen of the People's
6 Republic of China, seeks review of a July 29, 2016, decision
7 of the BIA affirming an April 17, 2015, decision of an
8 Immigration Judge ("IJ") denying Ou's application for asylum,
9 withholding of removal, and relief under the Convention
10 Against Torture ("CAT"). *In re Qijun Ou*, No. A201 128 205
11 (B.I.A. July 29, 2016), *aff'g* No. A201 128 205 (Immig. Ct.
12 N.Y. C. Apr. 17, 2015). We assume the parties' familiarity
13 with the underlying facts and procedural history in this case.

14 Under the circumstances of this case, we have reviewed
15 both the IJ's and BIA's decisions. *Yun-Zui Guan v.*
16 *Gonzales*, 432 F.3d 391, 394 (2d Cir. 2005). The applicable
17 standards of review are well established. See 8 U.S.C.
18 § 1252(b)(4)(B); *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 165-
19 66 (2d Cir. 2008)(per curiam).

20 The agency may, "[c]onsidering the totality of the
21 circumstances," base a credibility finding on an asylum
22 applicant's "demeanor, candor, or responsiveness" and any
23 inconsistencies and omissions in his testimony,

1 application, and documentary evidence. 8 U.S.C.
2 § 1158(b)(1)(B)(iii); see also *Xiu Xia Lin*, 534 F.3d at
3 163-64, 167. "We defer . . . to an IJ's credibility
4 determination unless . . . it is plain that no reasonable
5 fact-finder could make such an adverse credibility ruling."
6 *Xiu Xia Lin*, 534 F.3d at 167; see 8 U.S.C. § 1252(b)(4)(B).
7 Here, substantial evidence supports the agency's
8 determination that Ou was not credible.

9 The agency reasonably relied on discrepancies regarding
10 the length of Ou's detention and his medical treatment.

11 8 U.S.C. § 1158(b)(1)(B)(iii). Ou's testimony that he was
12 detained for three days contradicted his testimony that he
13 was detained from December 25 until December 31 (a total of
14 six days). The agency was not required to accept Ou's
15 explanation that his medical condition resolved this
16 inconsistency given that his medical records reflected only
17 that he was diagnosed with a respiratory infection, "fever
18 [,] and cough," and did not mention that Ou was
19 unconscious. See *Xiu Xia Lin*, 534 F.3d at 166-167, 166 n.3
20 (noting that "an inconsistency and an omission
21 are . . . functionally equivalent" for credibility
22 purposes); *Majidi v. Gonzales*, 430 F.3d 77, 80 (2d Cir.
23 2005) ("A petitioner must do more than offer a plausible

1 explanation for his inconsistent statements to secure
2 relief; he must demonstrate that a reasonable fact-finder
3 would be *compelled* to credit his testimony." (quotation
4 marks omitted)).

5 Ou now argues that the English translations of his
6 medical records are incomplete and unreliable. But Ou did
7 not raise this issue before the BIA, and it is therefore
8 unexhausted. *Foster v. U.S. INS*, 376 F.3d 75, 78 (2d Cir.
9 2004) (requiring the "petitioner to raise *issues* to the BIA
10 in order to preserve them for judicial review"). Moreover,
11 because Ou has the burden of proof and and he introduced the
12 medical records and translations into evidence, it was his
13 responsibility to ensure that his own translations were
14 accurate. See 8 U.S.C. § 1158(b)(1)(B)(i).

15 As the Government argues, Ou has waived any further
16 review because he does not challenge any other bases for
17 the agency's adverse credibility ruling. See *Shunfu Li v.*
18 *Mukasey*, 529 F.3d 141, 146 (2d Cir. 2008). Moreover, our
19 review of the record reveals no basis for challenging the
20 IJ's negative demeanor finding, given the lack of detail
21 and responsiveness in Ou's testimony. *Li Hua Lin v. U.S.*
22 *Dep't of Justice*, 453 F.3d 99, 109 (2d Cir. 2006) (granting
23 particular deference to credibility findings based on

1 applicant's demeanor).

2 Given the multiple discrepancies, only two of which Ou
3 challenges, as well as the negative demeanor finding, the
4 totality of the circumstances supports the agency's ruling.
5 *Xiu Xia Lin*, 534 F.3d at 166-67. Contrary to Ou's
6 position, because asylum, withholding of removal, and CAT
7 relief were all based on the same factual predicate, the
8 adverse credibility determination is dispositive. *Paul v.*
9 *Gonzales*, 444 F.3d 148, 156-57 (2d Cir. 2006); *see also*
10 *Siewe v. Gonzales*, 480 F.3d 160, 170 (2d Cir. 2007).

11 For the foregoing reasons, the petition for review is
12 DENIED. As we have completed our review, any stay of removal
13 that the Court previously granted in this petition is VACATED,
14 and any pending motion for a stay of removal in this petition
15 is DISMISSED as moot.

16 FOR THE COURT:
17 Catherine O'Hagan Wolfe, Clerk of Court